

ST 03-0008-GIL 01/08/03 RETURNS:

This letter discusses who owes the sales tax when a lessee operates a business upon property owned by the lessor. See 86 Ill. Adm. Code 130.101, 130.1305, and 130.1310 concerning Leased Portions of Lessor's Business Space. (This is a GIL.)

January 8, 2003

Dear Xxxxx:

This letter is in response to your letter of August 30, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Who pays the Illinois Department of Revenue the remaining sales tax due from our marina concession lease operation?

This question is being raised by a new lessee of our marina concession. Concession operators of the past twenty plus years have filed sales tax with the Department of Revenue. I am writing for an opinion to document the responsibility.

AAA leases a business concession to a private individual who through the lease will use building and equipment such as freezers, refrigerators, cash registers, pizza ovens, soft serve ice cream, bait and soda vending machines and gasoline vending equipment to provide services for members and guests at the private lake development. The lessee sets his price and develops his own name for his leased operation.

The gasoline vending operation description: 1) AAA owns 2 - 1,000 gallon below ground tanks, pumps and distribution system. AAA maintains the working condition of the fuel dispensing system and pays all operating costs except fuel supply. The lease of the concession qualifies the underground tanks are full capacity at the start of the season and will be topped by the lessee at the conclusion of the season. The lease additionally qualifies the lessee (concessionaire) to pay AAA twenty-seven cents (.27) per gallon for use of mentioned gasoline vending system.

The lessee or concessionaire dispenses all the fuel, collects all the receipts from metered dispensing fuel, calls fuel supplier to replenish underground storage tanks, and pays the fuel supplier for all fuel dispensed and sets the pump meter cost/gallon. The lessee pays the distributor additionally supplier the PPST (.04) gallon tax at the point of delivery. The supplier additionally uses the lessee or concessionaire Illinois business

tax number to report the Illinois Department of Revenue the credit concerning the tax (PPST) paid.

The concessionaire stated he called upon the Department of Revenue and was told that AAA is responsible for the remaining sales tax owed to the Department of Revenue. I disagree and request a determination.

For your information we have enclosed copies of 86 Ill. Adm. Code 130.101, 130.1305, and 130.1310 concerning Leased Portions of Lessor's Business Space. These rules explain the circumstances under which retailers who engage in selling on their premises and also lease those premises to others, who engage in selling upon those premises, are required to file returns with the Department for those sellers. Please note that if the lessees are operating under their own identity, they must register and remit tax to the Department. If the lessees operate under the identity of the lessor, then the lessor is responsible for remitting the tax. See also subsection (a) of the enclosed copy of 86 Ill. Adm. Code 130.1915. If the lessees operate under the identity of the lessor, the lessor may allow the lessee to file its own return, but the lessor may still be liable for the lessee's tax liability if it is not properly paid.

It is unclear whether these provisions apply to your situation since it appears that the lessor is not retailing on the same premises as the lessee. We urge you to consider the applicability of this regulation to your circumstances.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.